



United States
Department of
Agriculture

Forest
Service

Uinta and
Wasatch-Cache
National Forests

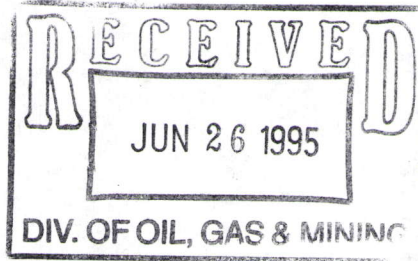
88 West 100 North
Provo, UT 84601

S/023/015

DOGM
MINERALS PROGRAM
FILE COPY

File Code: 1950

Date: June 19, 1995



Dear Forest User:

On March 6, 1995, I signed a Record of Decision (ROD) for the Gardner Canyon Gypsum Mine. This ROD was made available to individuals on this project's mailing list. In response to my decision, three administrative appeals were received. These appeals were reviewed pursuant to 36 CFR 215.17 and on June 9, 1995, Appeal Deciding Officer Jack Blackwell issued a decision affirming my decision but directing me to change the language in the ROD. Specifically, page 4 of the ROD, Decisions Beyond My Authority, is changed from: "The Forest Service does not have authority to make a decision on the type of mining operation or mandate how outstanding mineral development will occur" to "The Forest Service has the authority to determine the reasonable use of the federal surface overlying outstanding mineral rights."

This change is being made in light of a March 21, 1995, Eighth Circuit Court decision (*Duncan Energy Co. v. United States Forest Service*) which states that the Forest Service does have authority to determine whether or not the proposed actions are reasonable, and as such, within the scope of the deeded rights of the mineral owner. The Eighth Circuit ruling overturned a lower court holding in *Duncan* in effect when the ROD was signed stating that the Forest Service did not have authority to regulate outstanding mineral rights.

The Forest Service may therefore seek to insure that the proposed mining use is reasonable use of the surface, and may propose alternatives for mining that will minimize surface damage so long as those alternatives do not prohibit reasonable use. However, insofar as my decision indicated that mining methods set forth in the ROD and Environmental Impact Statement (EIS) are binding, it was overstated. These measures are proposed as the Forest Service's assessment of reasonable use. If the mineral estate owner can demonstrate that they would unreasonably prohibit recovery of minerals, the methods cannot be enforced by the Forest. I may, upon consideration of such information and after negotiations with the proponent and the State of Utah, agree to modify the conditions of mining, or may prohibit any mining activities that are determined to exceed reasonable use.

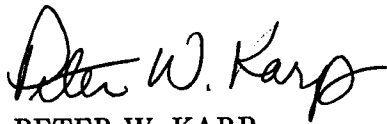
In reaching his appeal decision, the Appeal Deciding Officer determined that the analysis of impacts in the EIS was sufficient considering the limited discretion of the Forest Service to review the mining proposal and determine reasonable use of the surface estate. Therefore, the changes in the ROD are technical changes and do not constitute a new decision. Consequently, these changes are not appealable under 36 CFR 215.



Caring for the Land and Serving People

I appreciate your interest in the management of Mt. Nebo Wilderness and the Uinta National Forest. If you have any questions, please contact Reese Pope at (801) 342-5100 or Earl Kerns at (801) 342-5260.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter W. Karp". The signature is fluid and cursive, with the first name "Peter" and last name "Karp" clearly legible.

PETER W. KARP
Forest Supervisor, Uinta National Forest

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